CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *
*
* * * * * * *

Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Monday Afternoon Session
May 5, 2003
1:36 p.m.
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I N D E X

WITNESS: PAGE

ROBERT E. TOWNSEND, Ph.D.

DIRECT EXAMINATION
BY MR. BELASIC.....19791
CROSS-EXAMINATION
BY MR. BENCOMO.....19818

P R O C E E D I N G S

THE BAILIFF:
All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE MINUTE CLERK:
All rise, please.
Oyez, oyez, oyez, Civil District Court for the Parish of Orleans, State of Louisiana, is now in session. The Honorable Richard Ganucheau presiding.
Please be seated.
THE COURT:
Good afternoon.
THE JURY:
Good afternoon, Your Honor.
THE COURT:

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Is defense counsel ready to call their next witness?

MR. BELASIC:

Yes, Your Honor.

And good afternoon to you.

Good afternoon, ladies and gentlemen.

THE JURY:

Good afternoon.

MR. BELASIC:

Your Honor, our next witness is Dr. David Townsend.

THE COURT:

Have you been sworn?

THE WITNESS:

Not yet, Your Honor.

* * * * *

DAVID EUGENE TOWNSEND, Ph.D., 401 North Main Street, Winston-Salem, North Carolina 27102, after having been first duly sworn by the Court, testified on his oath as follows:

* * * * *

THE COURT:

Mr. Belasic.

DIRECT EXAMINATION

BY MR. BELASIC:

Q. Dr. Townsend, could you tell the jury who you are?

A. Yes.

My name is David Townsend. I work at R. J. Reynolds Tobacco Company.

Q. Can you tell us just very briefly about some of your background, where you grew up, do you have a family?

A. Sure.

I grew up in Charlotte, actually. I was born in Kansas City, grew up in Charlotte with my family, moved there when I was very young, spent most of my childhood there.

Eventually went to University of North Carolina at Chapel Hill for college. From there, I went to Florida State University for my graduate education. From there, then -- in between had a period of time when I was in the Army and was in Georgia.

Then once I graduated from Florida State, I went to New Jersey and Philadelphia and worked for

a chemical company called Rohm & Haas. I have a family, a wife and two daughters. Both daughters are grown and on their own.

Q. Let's go back to where you work.

You work for R. J. Reynolds Tobacco Company; right?

A. Yes, I do.

Q. And what do you do there?

A. Currently, I'm Executive Vice-President of Research & Development.

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Q. And is that the top position in the Research & Development Department?
A. It is. It's the top position in Research & Development.
Q. Would you tell us briefly what does the Research & Development Department do at a tobacco company like R. J. Reynolds?
A. Well, actually, we do a lot. It's a big job. We design cigarettes to beat the competition; we also design cigarettes to reduce the risks; we also do quite a lot of biology, toxicology and chemistry to make sure that nothing we do to cigarettes will increase that risk.
Q. And about how many people work in the R & D Department?
A. Currently, it's about 320 in R & D. And of those about, I would guess, about 60 have Ph.D.s. There are a number of master-degreed scientists as well as bachelor-degreed scientists.
Q. Are they good, qualified scientists?
A. They're the tops.
Q. Good people?

A. They're great people, they're great scientists, yes.
Q. And you're in charge of all of them?
A. Yes.
Q. Who do you report to?
A. I report to Lynn Beasley and Andy Schindler. Mr. Schindler is CEO of the company and Director of the Board of Directors. He's Chairman of the directors.
Q. Now, how long have you worked at R. J. Reynolds?
A. I've been there for a little over 25 years.
Q. And in those 25 years, have you been involved in the research and development of cigarettes and cigarette design?
A. Well, for all those 25 years. For the entire stay that I've had at Reynolds, I've been involved in cigarette design and trying to understand how cigarettes work and how to modify the cigarettes to do certain things like reduce the risks.
Q. And as someone who's worked at R. J. Reynolds for 25 years and is in charge of the R & D Department, are you prepared to tell this jury about the history of cigarette design and those issues at R. J. Reynolds Tobacco Company?
A. Yes, I am.
Q. Are you prepared to respond to the claims of the plaintiffs in this case about the different designs of cigarettes and cigarette modifications?
A. Yes.
Q. And are you prepared to come here to testify about the different ways in which the risks of

smoking or the inherent risks of smoking might be reduced with different cigarette designs?
A. Yes, I am.

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Q. Let's talk about why you're qualified other than your position at work to do that. What type of degrees do you have?
A. I have a Bachelor of Science degree from the University of North Carolina at Chapel Hill in chemistry; I have a master's degree and a Ph.D. from Florida State, and that's in the area of physical/organic chemistry.
Q. You have a doctorate then in organic/physical chemistry?
A. Yes.
Q. Would you tell the jury what organic/physical chemistry is?
A. Sure.

Well, organic -- it's actually two different branches of chemistry. Organic chemistry is the study of what we call organic molecules. They're molecules that are primarily made of carbon and hydrogen and are the building blocks of most natural materials, natural products.

And physical chemistry is studying the physical aspects of molecules, for example, how fast they react, how size and shape matter to the types of reactions that go on, how fast certain types of reactions go on, kinetics.

So physical/organic chemistry is the study of physical aspects of organic molecules.

Q. Okay. And you have applied that education to your practical effect in designing cigarettes at

Reynolds?
A. Yes.
Q. Did you publish any papers as part of your Ph.D. research?
A. Yes, I published a number. I would say it's twelve, thirteen, something like that.
Q. And have you published any papers after that?
A. I've published several, yes.
Q. Now, you mentioned a job that you had preceding. What job did you have after you got your Ph.D., your doctorate, in physical/organic chemistry?
A. My first job was with a chemical company, as I said, Rohm & Haas in Philadelphia. And I worked in Process Research, particularly dealing with molecules that we call monomers. They're compounds or molecules that ultimately can be made into polymers that are plastics, things like car coatings, car finishes, plastics like Plexiglas and others.
Q. After you left that job at the chemical company, who did you go to work for next?
A. From Rohm & Haas, I went to R. J. Reynolds Tobacco Company in Winston-Salem.
Q. Now, when you were deciding whether to take the job at R. J. Reynolds, well, you knew they manufactured cigarettes, of course; didn't you?
A. Of course.
Q. And you knew and had heard that cigarettes have -- can have serious risks to health, including disease risks?

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A. No question about it.

Q. Why did you go work for a company that made cigarettes that can have health risks?

A. Well, I think there were -- I think there were at least two or three different reasons. One is that the people I saw at Reynolds were top scientists.

I saw that the types of work that was going on at Reynolds was extremely challenging because the physics and the chemistry inside a burning cigarette is very, very complicated. So trying to unravel that chemistry and physics is an intellectual challenge, it's something that I thought would be fun.

And then the third reason is because in applying that, I could see ways, as many of the Reynolds' scientists did, see ways to apply that to potentially reduce the risks of smoking.

Q. What was your first job at Reynolds?

A. My first job, once I was hired there, was as a senior R & D chemist. I worked in the area of filtration, how to remove certain compounds from smoke, I worked on cigarette paper and how cigarette -- trying to determine how cigarette paper can influence the production of different compounds in smoke. And it was all aimed at trying to reduce the risks of smoking.

Q. Can you give the jury just a brief summary of how you rose from senior R & D chemist up to where you are now as the person in charge of R & D?

A. Sure.

Well, let's see. I joined in 1977 as the senior R & D chemist where I spent all the time

working in the laboratory on some of the areas that I've already talked about.

In 1983, I think it was, I was promoted to master scientist, which we have a dual ladder, a technical ladder, so that scientists can get promoted along this technical ladder. And master scientist is the first rung of that technical ladder.

At that point, I started being more involved in actually planning research, not just doing it, but planning research and trying to decide the types of experiments that needed to be conducted to accomplish the goals.

In 1987, I was promoted to principal scientist, which is the next step up the technical ladder. And began to assume some management responsibility. I had a small research group that I actually directed at that point.

My next promotion was in 1995 where I was promoted to senior principal scientist, which is the highest technical position at Reynolds, other than the head of R & D. So it's the highest technical position at Reynolds.

And in 1996, I was promoted to Director of

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Product Development.
In 1997, I was promoted to Vice-President of Product Development.
In 2000, I was promoted to Executive Vice-President in charge of Research & Development.
Q. So is there anyone in R & D that has a higher position with respect to how Reynolds designs its cigarettes?

A. No.
Q. You're the top guy?
A. On product design, yes.
Q. Okay. You were talking about what you did when you first became a chemist. And I believe you said you were looking at identifying and reducing certain compounds in cigarette smoke --
A. Right.
Q. -- through filtration and other methods?
A. Yes. There's a number of ways.
Q. And, again, why were you doing that?
A. Because cigarette smoking poses an inherent and a significant risk to smokers. And trying to use science, trying to understand how cigarettes work, and then use those results to try to reduce the risks of smoking is what we're about.
Q. Okay. Now, after you started getting your promotions and worked your way up to Executive V. P. and running the R & D Department, have you continued to do that work, to try to reduce the inherent health risks of smoking?
A. Yes.
Q. At any point in your career at Reynolds, have you ever been responsible for cigarette advertising or marketing?
A. No.
Q. Okay. You haven't designed cigarette advertising campaigns?
A. No, of course not.
Q. If I started asking you questions about different cigarette advertising campaigns and why they were done, would that be a waste of my time?

A. I think pretty much it would be, yes.
Q. Have you ever worked in Reynolds' Public Relations Department?
A. No, of course not.
Q. Have you ever been responsible for writing responses to customers or others who write in to R. J. Reynolds?
A. No.
Q. If I asked you questions about that and why Reynolds wrote certain documents, would that be a waste of my time?
A. I think it would, yes.
Q. Okay. Are you here to talk about cigarette design, cigarette composition, and the way Reynolds has worked to reduce the inherent risks of smoking?
A. Yes, I am.
Q. Now, Doctor, you told us that you have

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published some papers during your work at Reynolds. Have you also lectured and presented scientific papers, made scientific presentations while you're doing your work at Reynolds?
A. I have made presentations while I've been employed at Reynolds in various conferences like the Tobacco Chemist Research Conference, which is now called the Tobacco Science Research Conference; at CORESTA, which is an organization of scientists from around the world looking at issues related to tobacco as well as other places; I've developed and taught a course in cigarette design for scientists at Reynolds, among others.
Q. Do you hold any patents in the area of cigarette design?

A. Yes.
Q. Now, I wanted to ask you about professional organizations. And I think you mentioned a few of them already. Remind us again what was that CORESTA that you talked about.
A. CORESTA is an international organization of scientists where scientists can come together and present the results of their research, share their research with others. It also is an organization that allows scientists to develop standardized test methods related to cigarettes and tobacco. It actually serves a number of functions. And it's a very large organization.
The Tobacco Science Research Conference is a group that gets together once a year solely for the purpose of sharing research results in presentations.
Also, I belong to the American Chemical Society, which is the premier organization for chemists in the United States. And I also belong to The Combustion Institute.
Q. The two organizations that you talked about that deal with tobacco, CORESTA and this Tobacco Science Research Council, are those limited just to tobacco company employees?
A. No, they're not. They're open to anybody who can contribute, who wants to participate. For example, members of the American Health Foundation, university scientists and others attend both of those organizations.
Q. Has the United States Government ever asked you to participate on any cigarette design task

force or committee?
A. Yes.
Q. Could you tell the jury about that, please?
A. Sure.
And, actually, there are three that I've been invited to participate in. The first two relate to cigarette fire safety. In the late 1980s and then again in the 1990s, Congress put together a task force to look at is it possible to make cigarettes less likely to start a fire if they're accidentally

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dropped on upholstered furniture? And I was asked to participate in both of those.

In 1994, I believe it was, the National Cancer Institute put together a conference looking at the Federal Trade Commission's smoking method, you know, how cigarettes are smoked on a smoking machine. And I think there were eleven panelists and then there were fourteen invited experts. I was one of the invited experts that was asked to come, give a presentation, and also engage in discussion.

Q. The National Cancer Institute, of course, is a federal agency?

A. Yes.

Q. So when the National Cancer Institute held this national conference on smoking and FTC test method, they picked you as a cigarette design expert to come and talk?

A. They picked me to come talk to them about cigarette design.

Q. Okay. Weren't you also on an expert committee selected by the Canadian government?

A. Yes.

In, I think it was, 1996, the Canadian government put together a panel trying to see if it's possible to modify cigarettes to reduce the risks, to make safer cigarettes. And I was invited to participate on that panel as well.

Q. Did you recognize any of the plaintiffs' experts as people who also attended that?

A. There are a number of people at that committee who have ultimately become plaintiffs' experts, yes.

Q. Dr. Henningfield that the jury saw?

A. Dr. Henningfield was there, yes.

Q. Dr. Benowitz who the jury saw, was he there?

A. Dr. Benowitz was, yes.

Q. The Canadian government picked you along with them to come and be an expert on that cigarette design committee?

A. That's right, they picked me to participate in the capacity of cigarette design.

Q. Okay. So you've been picked by two different governments then to participate on cigarette design issues as an expert?

A. That's right.

Q. Now, as an Executive Vice-President in charge of Research & Development and working with government agencies and regulators, do you study the regulations and the statutes that control cigarettes today?

A. Sure. Of course.

Q. Why do you do that?

A. Well, because we intend to comply with all regulations related to cigarettes. So we must know

the regulations very carefully, very -- in great detail because we comply completely.

Q. Have you ever heard people claim that

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cigarettes are one of the most unregulated products out there?
A. I've heard many people say that, yes.
Q. Is that true?
A. Well, I don't think it's true at all. I think there's quite a few regulations on cigarettes in terms of reporting constituent yields, reporting tar and nicotine and carbon monoxide to the Federal Trade Commission, there's regulations from the U.S. Department of Agriculture and others.
Q. So are there any government limitations on what Reynolds can communicate to the public about its cigarette products?
A. I'm not sure I understand your question.
Q. Well, for example, can you just say anything about the performance of a cigarette?
A. No, of course not.
Q. What government agency would regulate statements about how a cigarette could affect health, for example?
A. Well, certainly, the Federal Trade Commission has very tight regulations on what's said in the public arena about any consumer product.
For example, if R. J. Reynolds Tobacco Company made certain statements about our cigarettes that we couldn't support, the Federal Trade Commission would require us to produce evidence that supports it or take the product off the market or there would be some other remedial action.

Q. Do any federal government regulations define what a cigarette is?
A. Well, Congress, I think, has defined very clearly what a cigarette is.
Q. And how have they defined what a cigarette is?
A. Well, Congress a number of years ago defined "cigarette" as essentially tobacco rolled in paper. So it's a very simple definition to a very complicated product.
Q. Well, if a cigarette is just tobacco rolled in paper, then why in the world do you need 300 scientists or 300 employees and 60 Ph.D. scientists in a department like yours?
A. Because the cigarette is very complex. The chemistry and the physics inside a burning cigarette is very complex. And to reduce the risks of smoking, to make -- to do the kind of research to be sure that you're doing nothing to increase the risks of smoking requires very sophisticated science, it requires very sophisticated scientists.
Q. Do you smoke yourself, Doctor?
A. I do.
Q. When did you start smoking?
A. I was probably 27 when I started smoking.
Q. You weren't a teenager?
A. No.
Q. You were working at R. J. Reynolds when you started smoking?
A. No, actually, I was -- I just finished my Ph.D. and I just began working with Rohm & Haas.

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Q. What about at Reynolds? Do they make you smoke there?
A. No, of course not. In fact, I think most employees at Reynolds don't smoke.
Q. Now, do you regard cigarette smoking as a choice that you yourself have made?
MR. BENCOMO:
Objection. Relevancy.
MR. BELASIC:
It goes to background, Your Honor.
THE COURT:
Overruled.
Answer the question, if you're able to.
THE WITNESS:
I'm sorry. Can you repeat the question?
EXAMINATION BY MR. BELASIC:
Q. Do you consider your cigarette smoking a choice that you've made?
A. Yes, it's clearly a choice I've made. I'm very aware of the risks of smoking and I've chosen to smoke.
Q. Do you try to convince other people to make that choice to smoke?
A. No, I don't.
Q. Why not?
A. Because it is a serious risk for a number of diseases. Cigarette smoking is risky. And I would not begin to try to convince anybody to smoke.
Q. Now, with all of the diseases that are related to smoking, why on earth would you take that risk?
A. For me, at this point in my life, cigarette smoking is very enjoyable. I enjoy it. I smoke

because I like it. I'm well-aware of the risks and I've taken that risk clearly into the equation in calculating whether or not I'm going to smoke. I enjoy it. And for me, at this point in my life, that's my choice. It may change at some point.
Q. Do you think it's a reasonable choice for you?
A. For me, at this point in my life, it's a reasonable choice. For me.
Q. You've told us a little bit about what you did at R & D and your educational background. During these 25 years that you've worked for R. J. Reynolds, have you continued your education, have you continued to learn more?
A. Well, sure.
In fact, college and universities prepare you to do research. They give you the skills that allow you to do research. But when you come to a very specialized industry, like the cigarette industry where the science is very complicated and it's stuff that you don't learn in universities, you learn on the job.
So you're constantly going to the library, you're talking to scientists from other companies

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or other areas, trying to learn as much as you can. It's an ongoing process.
Q. Do you attend various scientific conferences that deal with the issues that you work with every day?
A. Yes.
Such as the Tobacco Science Research Conference, CORESTA, The Combustion Institute has

conferences around the country where they discuss various issues like this.
Q. When you said you review the literature, what do you mean by "literature"?
A. Well, two things: First of all, internal literature, that is, reports inside R. J. Reynolds, reports of scientific research that our scientists have conducted; the second thing is external literature, research reports that come from scientists and other tobacco companies or scientists at universities or scientists in the public health community and other places.
So there's external, which includes both tobacco scientists and non-tobacco scientists; and then there's internal, where we've conducted our own research.
Q. Let's talk about what you learned about the internal activities of Reynolds' R & D Department.
A. Okay.
Q. When did Reynolds first develop an R & D Department?
A. The R & D Department was created in the very early fifties.
Q. And you joined Reynolds again in what year?
A. 1977.
Q. So you've been at Reynolds for about 25 years; correct?
A. Yes.
Q. But they also had an R & D Department for about 25 years before you came?
A. That's about right.
Q. Okay. Now, does your job as Executive

Vice-President in charge of R & D, does that require you to learn about the 25 years that happened before you came?
A. Absolutely.
I think to do good science, you've got to go back and find out what others have done in the area, the types of experiments they've conducted, what their successes and failures have been.
To try to understand the past so that you can then do good experiments to lead your knowledge forward is absolutely critical.
Q. How did you learn about what Reynolds' scientists did from the early fifties until '77 when you arrived?
A. Well, the main ways to learn about the earlier work prior to my employment at Reynolds is to go to the R & D library and go through research

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reports. And you can actually go back and look at laboratory notebooks and get even more detail about what goes on or what went on. So internal research reports is the first place.

Second, another very good way which all of us do is talking to people who were there at the time, who did those experiments. So talking to, in some cases, scientists who are now retired, getting their opinions about things, getting their insight on experiments they conducted.

Q. Can you tell us briefly what is in the R & D library at Reynolds, different types of things that are there?

A. Sure.

There's internal research reports, original

research from Reynolds; there's external published research information from peer-reviewed journals; certainly, a large collection of books; there's also all of the laboratory notebooks for all scientists at Reynolds.

When a scientist works in the laboratory, they write in a laboratory notebook that's actually owned by the library, so they report everything in that notebook. That's turned in when it's full to the library and they get a new one. The library archives all of that.

Q. Is there any policy at Reynolds about keeping those things in the R & D library?

A. Yes, there is a policy.

Q. And what is it?

A. All of these documents must be kept.

Q. How long has that policy been in effect?

A. Since the beginning of the R & D library.

Q. Does Reynolds do anything else to ensure that it kept its internal research other than putting it in the library?

A. Well, it's done several things.

It actually duplicated -- They made duplicate copies through microfilm primarily. And now, of course, we use computers which can serve as a backup database. And sometimes -- well, not sometimes -- but always it's stored in a separate location in case there's a fire or some other calamity to make sure that we don't lose these documents.

Q. Now, why is it that you read literature outside of R. J. Reynolds?

A. To find out what the state of science is, to

look at the various theories that are going around, to see what other people's thoughts and ideas are, to see what people's experimental successes are, to help us formulate our own research plans for the future and, also, stay abreast of our competition.

This is a fiercely competitive industry. And knowing what my competitors are doing, if I can figure out what my competitors are doing from the external literature, that's important.

Q. So you've read things like Surgeon General's

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reports?
A. Yes.
Q. Journal of National Cancer Institute?
A. Yes.
Q. Articles, say, by Dr. Henningfield or Dr. Benowitz?
A. Sure.
Q. You read things that Dr. Burns wrote?
A. Yes.
Q. Including things that predated your employment, before 1977?
A. Oh, certainly.
Q. Why would you do that?
A. To be the most informed on all these issues and the science around them as possible so that we can develop our best R & D program so that we can conduct the best science possible.
Q. Now, does the R & D Department have a role in giving information to the most senior executives, say, the President and the CEO at Reynolds on smoking and health issues?
A. Sure.

Q. And can you tell us what that role is?
A. The smoking and health issue is, at its basis, a scientific issue about whether or not cigarette smoking causes certain diseases, including lung cancer. So it's a scientific issue.
And our executive management at Reynolds looks to the scientists within the company to understand what the state of the science is, what is known about the risks of smoking, what's known about smoking and various specific diseases. So executive management looks to the consensus within R & D about these technical issues.
Q. And have you personally participated in these update meetings with senior executives?
A. Yes.
Q. How often do these meetings occur on smoking and health?
A. Well, there's not a regular occurrence. It happens when -- We have meetings like this when we need to, when there's new information from the scientific literature that may change the understanding about the risks of smoking or if something else important comes up. Mainly driven by the scientific -- the state of scientific knowledge.
Q. Now, do lawyers attend these meetings where you're meeting with the President and the CEO and you discuss smoking and health issues?
A. No, they don't.
Q. Do lawyers make the smoking and health position of R. J. Reynolds?
A. No, they don't.
It's a scientific issue. It's a scientific

question. And the scientists within Reynolds develop that position for the company.
Q. Well, you've testified in other lawsuits;

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right?
A. Yes.
Q. And do lawyers at Reynolds tell you what to say when you come here and you testify to these ladies and gentlemen of the jury?
A. No, they don't.
Q. Do lawyers at outside law firms tell you what to say when you come to testify?
A. Absolutely not.
Q. What about me? Have I told you what to say?
A. No, you haven't.
Q. You've testified a lot of times; haven't you?
A. Yes.
Q. That's because R. J. Reynolds was sued a lot of times; right?
A. That's right.
And it's also because many of the claims against Reynolds are based in science. And so, naturally, I wind up providing testimony.
Q. Well, if there's a lawsuit that attacks R. J. Reynolds for something they did with their cigarette design or their research, is there anyone at R. J. Reynolds that is better equipped and knows more to address those issues in court?
A. I don't think so.
Q. Okay. Is that why you're here today?
A. I think that is why I'm here, certainly.
Q. Now, in all of these lawsuits where you've testified, have you been accepted by the judge in

that case as an expert on cigarette design and other issues every time?
MR. BENCOMO:
Objection, Your Honor. Vague.
May we approach?
(Whereupon a bench conference is held at this time as follows:)
MR. BENCOMO:
Your Honor, if The Court please, Mr. Belasic's question was not only vague but it was also compound. He said, "on cigarette design and other issues." Much too broad.
THE COURT:
It's already been answered. What are you --
MR. BENCOMO:
He didn't answer at all. He didn't answer it.
MR. BELASIC:
I don't think he's answered it, Your Honor.
THE COURT:
All right. I'll sustain the objection to the form of the question. Just break it up.
MR. BELASIC:
Okay.
MR. BENCOMO:
Thank you, Your Honor.
(Whereupon the bench conference is concluded at this time.)

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THE COURT:

The objection is sustained.
Don't answer that question, Doctor.
The next question, please.
EXAMINATION BY MR. BELASIC:
Q. Dr. Townsend, I need to break it down.
You've testified many times in courts of law; correct?
A. Yes.
Q. And each time there was a judge like Judge Ganucheau here?
A. Yes.
Q. And a judge had to make a decision about whether you were qualified to testify as an expert and give your expert opinion to jurors; correct?
A. That's right.
Q. And have you been qualified as an expert in cigarette design?
A. Yes, I have.
Q. Have you been qualified as an expert in cigarette composition?
A. Yes, I have.
Q. Have you been qualified by judges as an expert in cigarette performance?
A. Yes.
Q. And have you been qualified as an expert to testify about the FTC test method and the performance of Reynolds' cigarettes under the FTC test method?
A. Yes, I have.
Q. Is there any time that a judge has rejected you as an expert on any topic?
A. No.

Q. You've been an expert every single time?
A. That's correct.
MR. BELASIC:
Your Honor, at this time we tender Dr. David Townsend as an expert on cigarette design, as an expert on cigarette composition, as an expert on cigarette performance, including performance as measured by the FTC test method, and as an expert on chemistry and smoke chemistry.
In addition, Dr. Townsend is obviously a fact witness based on his 25 years of work and personal knowledge at R. J. Reynolds.
Tender the witness.
THE COURT:
Cross-examination on the tender of qualifications, Mr. Bencomo?
MR. BENCOMO:
Yes, Your Honor. Thank you.
Before we begin, I'd like to approach on one point, please, before I begin.
THE COURT:
Yes.
MR. BENCOMO:

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Thank you.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Bencomo.
MR. BENCOMO:
Yes, Your Honor. Thank you.
I'm going to object and move to strike

on Page 2 of his expert report, he indicated that he is an expert in the areas of cigarette design and cigarette performance.
Mr. Belasic discussed about ten other different areas. And we object and move to strike as to his field of expertise in those other areas. I will, however, explore with this witness a number of issues.
THE COURT:
Jane, do you have the tender printed for me?
MR. BELASIC:
Could I respond briefly before?
THE COURT:
Let me get the tender in front of me.
(Addressing Mr. Bencomo.) Read that. I wanted you to read what you just told me.
MR. BENCOMO:
Yes, cigarette design and cigarette performance. That's what's on Page 2. And that's what it's limited to.
THE COURT:
Let me read it to you.
MR. BENCOMO:
It's right here (indicating), Judge.
That's correct.
THE COURT:
The other areas in which he's tendered as an expert should be stricken because of the language in the report?
MR. BENCOMO:
That's correct.

THE COURT:
All right. Mr. Belasic?
MR. BELASIC:
Yes.
Each of the areas that I covered is extensively addressed in Dr. Townsend's report, including cigarette composition, including cigarette performance, its tar and nicotine yields; the FTC method, in particular, is discussed in great detail; and as is smoke chemistry and Reynolds' efforts to change and reduce the harmful impact of smoke chemistry. Every single one of those issues.
Clearly, based on his education, his research, his 25 years of work and the fact that the United States Government has

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selected him as an expert on these very issues, he's certainly well-qualified. It's on his report. And I think that you should and will accept him as an expert on those issues.

MR. BENCOMO:

I did not want to waive my objection by beginning with my cross on the witness on this point, Your Honor, but I'm going to go into it.

THE COURT:

All right. At this point, the objection is overruled. And it doesn't preclude you from reurging it later on.

MR. BENCOMO:

Thank you.

(Whereupon the bench conference is concluded at this time.)

THE COURT:

Cross-examination on qualifications, Mr. Bencomo?

MR. BENCOMO:

Yes, Your Honor. Thank you, Your Honor. Good afternoon, ladies and gentlemen.

THE JURY:

Good afternoon.

MR. BENCOMO:

Good afternoon, Your Honor.

THE COURT:

Good afternoon.

MR. BENCOMO:

Dr. Townsend.

THE WITNESS:

Good afternoon.

MR. BENCOMO:

How do you do, sir?

THE WITNESS:

Fine.

CROSS-EXAMINATION

BY MR. BENCOMO:

Q. My name is Raul Bencomo. And I represent the plaintiff class in connection with this litigation.

I would like to just ask you a few questions at the outset concerning some of the responses that you gave to Mr. Belasic.

Mr. Belasic asked you if it would be a waste of time to ask you questions about letters written

because you don't work in the PR Department; is that not correct, sir?

Do you remember that?

A. I remember a question similar to that. I think you've paraphrased it.

Q. What is your recollection of what Mr. Belasic's question was concerning your writing letters or responding to letters from children or smokers?

A. I don't remember him asking me a question

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about responding to children. I just don't recall that part of it.

I do recall him asking me if it would be a waste of his time to talk to me about public relations. And I think my response was "Yes."

Q. Okay. Now, do you ever have an opportunity as the head of the Research & Development Department at Reynolds to meet with the public relations people?

A. Of course.

Q. Okay. And do you give them information to respond to your customers about the science of cigarettes and cigarette design?

A. There are times when there are scientific issues, we describe that to people in the Public Relations Department.

Q. Now, you also testified -- and I just want the record to be perfectly clear on this -- you don't live in Louisiana; correct?

A. No, I live in North Carolina.

Q. And, by the way, thank you for the Hornets. I'm sorry we lost our coach. We have a good team.

A. I understand.

Q. The one thing that I wanted to ask you about that, though, is you're not a member of the class. You realize that because you don't live and you're not domiciled in Louisiana; correct?

A. I don't live in Louisiana.

Q. But what struck me is the fact that you told this jury that you started smoking at age 27; is that not correct?

A. Yes.

Q. And you were an adult; correct?

A. That's right.

Q. And you hold a Ph.D. degree in chemistry; correct?

A. That's right.

Q. And so you made a choice that adults are able to make; is that not correct?

A. I think making the choice to --

Q. Sir, please, let's understand each other. I'm going to ask you to respond with a "Yes" or a "No." If you want to explain it, then please do so. But please respond to my question with a "Yes" or a "No."

MR. BELASIC:

Objection, Your Honor. May we approach?

THE COURT:

You may approach.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

Mr. Belasic.

MR. BELASIC:

First of all, it's totally improper for Mr. Bencomo to interrupt the witness as he was just about to say "I think" and is giving

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his answer.
Second of all, while certain witnesses may or may not have agreed or been bullied into this "Yes" or "No" deal, there's no such requirement under the law. This witness can give his best and honest answer. If he can answer "Yes" or "No," of course, he can. And, certainly, Your Honor is in control of this cross-examination. But that kind of what --
MR. BENCOMO:
Don't point at me, please.
MR. BELASIC:
-- Mr. Bencomo is doing is inappropriate.
MR. BENCOMO:
Judge, if I may respond.
First of all, this witness is the tobacco industry's --
THE COURT:
I'm going to cut this short.
MR. BENCOMO:
Yes.
THE COURT:
I'm going to instruct him that if he's able to answer a question with a "Yes" or a "No" --
MR. BENCOMO:
Thank you very much.

THE COURT:
-- he must do so.
MR. BENCOMO:
Thank you. I appreciate it.
THE COURT:
If he'd like to explain his answer, he may do so. If he's not able to answer a question, he's to state that he's not able to answer the question.
MR. BENCOMO:
Thank you. Perfect.
THE COURT:
Those are the standard instructions.
MR. BENCOMO:
Thank you very much.
MR. BELASIC:
Your Honor, will you sustain my objection to Mr. Bencomo cutting his answer off to make the speech he did?
THE COURT:
And don't do that again, Mr. Bencomo.
MR. BENCOMO:
Okay.
THE COURT:
Let him finish his answer.
MR. BENCOMO:
Yes, Your Honor.
Could we have the question read back? Or is it possible to have it read back?
THE COURT:
I'm going to do that.

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Thank you.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The objection is sustained.
And Mr. Bencomo has been instructed not to interrupt the answer that a witness is giving to a question.
Doctor, the rules of court are as follows: If you're able to answer a question with a "Yes" or a "No," you must do so. If you wish to explain your answer after giving that answer, you may do so. If you're not able to answer a question, just say, "I'm not able to answer the question."
And here is the question that you are now instructed to answer.
THE WITNESS:
Yes, sir.
THE COURT:
"And so you made a choice that adults are able to make; is that not correct?"
THE WITNESS:
Thank you, Your Honor.
The answer is "Yes," I did make a choice that I think only adults should make.

EXAMINATION BY MR. BENCOMO:

Q. Thank you.
Now, sir, as the Executive Vice-President of Research & Development at Reynolds, you indicated that you stand at the very pinnacle, the very top, of the Reynolds organization when it comes to

Research & Development; is that not correct?
A. I don't think I used -- Well, I don't think I used the word "pinnacle." I am responsible for that entire organization.
Q. Are you the man at the top in that department?
A. Yes, I am responsible for that organization.
Q. Thank you.
And if you were to be an executive chef, then all of the cooks, the line cooks, the dishwashers, the bottle washers, all of those folks would be under you; is that not correct, sir?
A. Yes.
Q. Okay. And you've heard of our famous chef, Emeril Lagasse; have you not?
A. No.
Q. You haven't? From Emeril's?
A. No.
Q. Well, he has a famous expression about "kicking it up a notch." I'm going to try to do that with you so that we can just try to kind of move things along.
Now, sir, you were asked a question by Mr. Belasic about lawyers and do lawyers do certain

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things. Do you remember that?
A. Yes.
Q. Okay. Now, I'm going to ask you not to mention any lawyers by name. But is the Jones Day law firm represented in this case?
A. Yes.
Q. And I'm also going to ask if you'll look at this side of the bar, not the side that contains the

lawyers who have been here day in and day out for the last four months but I'm going to ask you to look at this side, the side that I'm on, and tell me whether or not you can identify any Jones Day lawyers on this side of the bar?

MR. BELASIC:
Objection, Your Honor. This has nothing to do with the doctor's qualifications.

THE COURT:
If you wish to argue your objection, you should approach the bench, Mr. Belasic.
And that objection is overruled.
Answer the question, if you're able to.

A. I see one or two, yes.
EXAMINATION BY MR. BENCOMO:
Q. One or two?
Well, let's see if we can maybe find out because I need to know. Is this gentleman a Jones Day lawyer?
A. No.
Q. Is he an in-house R. J. Reynolds lawyer?
A. No.
Q. Is he a lawyer?
A. Yes.
Q. So he's with another firm?
A. That's correct.
Q. And he came here -- he's never been here before, to my knowledge -- he came here today to watch you testify; is that not correct?
A. He came here today for my testimony.
Q. Okay. And the gentleman behind him, is he a lawyer?

A. No.
Q. Okay. Is he with R. J. Reynolds?
A. Yes.
Q. And he came here today to listen to your testimony; is that not correct?
A. That is correct.
Q. And there are other individuals in this room -- What about this gentleman with the beard? Is he a lawyer with Jones Day?
A. Yes, he is. I'm sorry. Not with Jones Day. He is a lawyer.
Q. He is a lawyer with another law firm; correct?
A. No.
Q. Is he an in-house lawyer --
A. Yes.
Q. -- with Reynolds?

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And when did you all arrive, sir?
A. This morning.
Q. And how did you arrive?
A. By airplane.
Q. Was it the company plane?
A. Yes.
MR. BELASIC:
Objection, Your Honor.
THE COURT:
Mr. Bencomo, approach the bench, please.
MR. BENCOMO:
Yes, Your Honor.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:

I don't think --
MR. BELASIC:
I think we're way beyond qualifications.
THE COURT:
I'm sorry?
MR. BELASIC:
I just said we're way beyond qualifications, Your Honor.
THE COURT:
Yes.
MR. BENCOMO:
Your Honor, he opened a door about the lawyer involvement.
THE COURT:
But not about the airplane. And that's why I called you.
MR. BENCOMO:
That's fine.
THE COURT:
Don't talk about the perks that they have when they travel for R. J. Reynolds. That's off base. A private plane.
MR. BENCOMO:
Can I ask you a question, though, Your Honor?
THE COURT:
Well, don't ask him about Emeril's or --
MR. BENCOMO:
No, I'm not going to go into any of that.
THE COURT:
And don't ask him about the airplane.

MR. BENCOMO:
But I think his salary and bonus and all that, I think that's fair game.
THE COURT:
I think you can ask him what his compensation is, yes.
MR. BENCOMO:
Sure. Thank you.
THE COURT:
My point is the perks of travel are off

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limits.

MR. BENCOMO:
Okay.

THE COURT:
Okay?

MR. BENCOMO:
I'm done with that.

(Whereupon the bench conference is concluded at this time.)

EXAMINATION BY MR. BENCOMO:
Q. It's a fact, isn't it, sir, that you have now testified over twenty times in a court of law on behalf of the tobacco industry?
A. That's true, I have testified over twenty times.
Q. You've also had media training? And I realize it's in connection with your giving a speech or a presentation on the issue of cigarettes and fire hazards; is that correct?
A. You're right, I have had media training specifically on the issue of fire safety. I told you I was working in the area of cigarette fire

safety, trying to reduce the risks of fire.
So I did have media training for that. I have not had training to sit here today and talk about the science, however.
Q. Sir, do you realize that that was not part of my question?

MR. BELASIC:
Objection, Your Honor.

THE COURT:
Sustained.
Next question, please, Mr. Bencomo.

MR. BENCOMO:
Yes, Your Honor.

EXAMINATION BY MR. BENCOMO:
Q. Sir, during the opening statements, Mr. Wittmann said to this jury as follows. And I quote. This is from the January 21st, 2003 transcript.

MR. BELASIC:
Objection, Your Honor. May we approach?

THE COURT:
Yes.

(Whereupon a bench conference is held at this time as follows:)

MR. BELASIC:
We've had this issue and this ruling before. This issue has come up before when defense attorneys have asked regarding quotes from plaintiffs' lawyers. And Your Honor has ruled it's improper, it's not evidence in this case.

MR. BENCOMO:
Well, Judge, they opened the door. They

can't just sit there and make statements to this jury that I can't somehow or another get a witness to --

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THE COURT:
What issue is it you're going to bring up, if you care to tell me?
MR. BENCOMO:
Yes, I don't have a problem with telling you, Judge. And I think I'm right on the point. He said that this case is about the money. And I can ask him a question to address that issue.
Because Mr. Wittmann is going to stand up at the end of the day and say, "I told you this case was about the money." And I've not been able to do anything about it.
THE COURT:
What does that have to do with his qualifications? This is qualifications. You're going to get a chance to cross him. This is qualifications. And I think you're getting far afield.
MR. BENCOMO:
Okay. That's fine.
THE COURT:
If you want to talk about his income and other things, that could go to bias.
MR. BENCOMO:
And I'll go there. Okay. That's fine.
THE COURT:
But those are the merits of the case. This is qualifications.

MR. BENCOMO:
That's fine, Your Honor.
THE COURT:
So the objection is sustained to your reading that.
MR. BENCOMO:
I'm going to withdraw my question for the time being.
THE COURT:
Okay.
MR. BENCOMO:
So there's nothing to sustain.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The question is withdrawn.
The next question, please, Mr. Bencomo.
MR. BENCOMO:
Thank you, Your Honor.
THE COURT:
Turn on your microphone, please.
MR. BENCOMO:
Judge, I think it's on.

EXAMINATION BY MR. BENCOMO:

Q. Now, sir, it's customary to ask individuals such as yourself who are company insiders about their salary and their compensation. I'm going to ask you a set of questions about that, if I may.
And you've been asked questions about your compensation in other cases; have you not?

A. I have.

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Q. Now, please tell the jury what your salary was at Reynolds last year. I'm not asking if you're being paid to testify here. But I'm talking about your salary as the Executive Vice-President of Reynolds Tobacco.
A. My salary last year was 330,000 dollars.
Q. That's a third of a million dollars, roughly; correct?
A. Is that a question?
Q. Yes.
A. Yes, it is.
Q. I said, "correct, question mark"?
A. That is.
Q. Now, did you receive any bonus in addition to the 330,000 dollar salary?
A. Yes.
Q. And how much of a bonus did you receive?
A. Approximately 52,000.
Q. So we're now at 382,000 dollars that you received from Reynolds; is that not correct?
A. I think that's about right, yes.
Q. How many stock options do you currently control of Reynolds stock?
A. I really don't know an exact answer to that. I can give you a ballpark figure.
Q. That's fine.
A. I would say it's about 48,000 currently.
Q. How many?
A. About 48,000 currently.
Q. And how many of those options are in the money; do you know?
A. Pretty much none of them.
Q. Okay. So none of them are in the money?

A. Yeah, I think they're right on the edge.
Q. Okay. Now, how is the bonus that someone such as yourself receives determined?
A. It's determined by the company financial performance and by our share of market performance. So it's strictly how well the company does that year.
Q. All right. Well, I want to make sure that the jury understands that it is based on two factors.
One factor is the financial performance of the company; is that correct?
A. The financial performance of the company is one of the key factors.
Q. Okay. The second key factor is the market share of the company; correct?
A. The market share of the various brands that we sell, our investment brands.
Q. Okay. Is there anything else that is taken into consideration in determining your bonus?
A. No.
Q. Now, what about those who work under you? Do they also receive bonuses?
A. At certain levels, yes.

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Q. Okay. And those would be -- those levels would again be not, for instance, the bottle washer, it would be like a senior research scientist; correct?
A. No, that's not correct.
Q. All right. Well, tell me who would.
A. At certain levels, scientists or people in Research & Development as well as throughout the

company will receive a certain bonus based on financial performance and market share performance. And that's called the AIAP bonus system. But all employees, if the company does well, all employees receive a cash bonus as well.
Q. So insofar as those underneath you, they receive bonuses based on market share performance -- market share and financial performance?
A. Yes.
Q. Okay. The same criteria that is used for you?
A. Yes.
Q. Now, do you know what I never heard you say a bonus is given for?
A. Is that a question?
Q. Yes, it is, sir.
A. No.
Q. Do you know what I didn't hear you say?
A. No, I don't know what --
Q. You don't receive a bonus for coming up with a safe cigarette? You never said that to the jury; did you, sir? "Yes" or "No"?
A. No, I never said that to the jury.
Q. Thank you.
Now, sir, you want to keep your job; do you not? You like your job?
A. I do like my job very much.
Q. If, for whatever reason, you were to lose your job today, and let's say that you got the pay that a 25-year Ph.D. chemist in the State of Louisiana receives for teaching chemistry to children -- Do you know what that rate of pay is,

sir?
MR. BELASIC:
Objection. Speculation, Your Honor.
That's not what we --
THE COURT:
Overruled.
Answer the question, if you're able to.
Do you remember the question or shall I read it back to you?
THE WITNESS:
I do, Your Honor.
I don't know what the salary is for a teacher in the State of Louisiana or anywhere. In the State of North Carolina, either.
EXAMINATION BY MR. BENCOMO:
Q. A teacher, a chemist Ph.D. with 25 years

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experience in the State of Louisiana makes 45,000 plus a year.

MR. BELASIC:

Objection, Your Honor. May we approach?

THE COURT:

You may approach.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

Mr. Belasic?

MR. BELASIC:

Your Honor, first, it has nothing to do with the qualifications; but, second, there's no foundation.

Mr. Bencomo has just testified that a

teacher makes 45K. Who cares?

THE COURT:

Yes.

You can't testify, Mr. Bencomo.

MR. BENCOMO:

I'm sorry. I'll withdraw.

THE COURT:

You might ask him if he's aware of it.

MR. BENCOMO:

Sure.

THE COURT:

But you did testify.

MR. BENCOMO:

I did.

THE COURT:

And that's inappropriate.

MR. BENCOMO:

I did. And you're absolutely correct. And I apologize to The Court.

THE COURT:

No need to apologize. Just refrain from doing it again.

Mr. Belasic.

MR. BELASIC:

So we can avoid further waste of the jury's time, I'm going to object to any question comparing his salary to a teacher. There's no foundation that if he was a teacher, he'd be honest; or if he made less money, he'd be --

MR. BENCOMO:

It goes to motive. It goes to motive.

MR. BELASIC:

Not the comparison to a teacher.

MR. BENCOMO:

Sure, it does.

THE COURT:

You can make your objections on a question-by-question basis. And I will rule on them on a question-by-question basis.

(Whereupon the bench conference is concluded at this time.)

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THE COURT:
The objection to that question is sustained.
Next question, please, Mr. Bencomo.
MR. BENCOMO:
Yes, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Sir, assume for a moment that a Ph.D. teacher in the State of Louisiana who had been working and teaching children for 25 years makes 45,000 dollars a year. And assume that you've lost your job at Reynolds.
Would that take care of your standard of living if you were to have that type of job?
MR. BELASIC:
Same objection, Your Honor.
THE COURT:
Overruled. Answer the question.
A. I think my standard of living certainly would change. But I got to tell you I think I would really enjoy teaching. I've always liked that.
EXAMINATION BY MR. BENCOMO:

Q. When is the last time you applied for a teaching job, sir?
A. I've never applied for a teaching job.
Q. Thank you.
A. I just said that I think I would certainly enjoy teaching.
Q. Now, sir, I'd like to just kind of go through kind of a laundry list of the things that you are not.
You are not a medical doctor; is that not correct?
A. That's right.
Q. You have never treated any patients?
A. Well, if I'm not a medical doctor, the answer is "No."
Q. You have never diagnosed any type of disease; is that not correct?
A. That's correct.
Q. You are not a compensation -- and I'm not referring to now dollars, I'm not referring to your salary and bonus of 382,000 dollars; I'm referring to puffed volume -- you are not a compensation expert; is that not correct?
A. I wouldn't classify myself as an expert in compensation. I do, however, know a fair amount about it.
Q. Well, you have not ever written a peer-reviewed article in the area of puff volume and compensation; correct?
A. That's correct.
Q. Now, sir, are you able to tell this jury today four words: Cigarette smoking causes cancer?

"Yes" or "No"?
A. No.
Q. Are you able to tell this jury today

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cigarette smoking causes COPD? "Yes" or "No"?
A. I'm not going to tell the jury that because I don't know the answer to that.
Q. Are you able to tell the jury today cigarette smoking causes emphysema?
A. I'm -- Again, I'm not going to tell the jury that because I don't know that.
Q. Are you able to tell the jury today that cigarette smoking causes bladder cancer?
A. I'm not -- Again, I'm not going to tell the jury that because I don't know the answer to that.
Q. And your answer is that, just to make sure that they understand, of R. J. Reynolds Tobacco Company, also; is that not correct?
A. No, that's not exactly correct.
R. J. Reynolds makes it very clear that cigarette smoking poses serious inherent risks to people who smoke. And that it may cause these diseases, particularly for certain individuals.
Q. Sir, if R. J. Reynolds -- You are the face of R. J. Reynolds in this courtroom today.
My question is if R. J. Reynolds is asked the following question, does cigarette smoking cause cancer, is their answer "Yes" or is it "No"?
A. The answer is neither.
The R. J. Reynolds position that you're asking for is very clearly that cigarette smoking poses serious inherent risks for all the diseases you've talked about. Cigarette smoking is risky.

And it may cause those diseases, particularly for some individuals.
Q. You're familiar with the Surgeon General's report of 1964; are you not, sir?
A. I've read portions of it, yes.
Q. And now we're in the 21st Century; are we not?
A. That's correct.
Q. And you still need to qualify your answers to this jury on those issues; is that not correct? "Yes" or "No"?
A. Yes, I have to qualify my answer because, as I've already said to Mr. Belasic, the risks of smoking are clear. They're powerful and they're strong. And getting to the discussion about the risks of smoking is a scientific issue. And not all the pieces are actually in place.
Q. Sir, if you were to take a position at odds with that of your company's, you would be a Ph.D. with no J-O-B; is that not correct, sir?

MR. BELASIC:
Objection, Your Honor.

THE COURT:
Overruled.
Answer the question, if you're able to.

THE WITNESS:
Would you repeat the question, please?

THE COURT:
I'll read it back to you, sir.

MR. BENCOMO:
I'll be glad to.

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THE COURT:
"If you were to take a position at odds with that of your company's, you would be a Ph.D. without a J-O-B; is that not correct, sir?"
THE WITNESS:
I didn't understand your last word.
No, that's not correct. And, actually, in the direct examination that we've had so far, I thought it was clear that the company's position, in fact, comes from the scientists in my department; its consensus among the scientists who can directly address the smoking and health issue.
MR. BENCOMO:
Okay. And we'll discuss all that. I believe, Judge, it's about 2:45.
THE COURT:
I've got 2:40.
MR. BENCOMO:
Oh, I'm sorry. Then I'm a little fast and I apologize. I was looking at the wrong watch or clock. I'll go on to some other areas before we break.
Thank you.

EXAMINATION BY MR. BENCOMO:

Q. Dr. Townsend, you have never written any articles dealing with cancer and compounds in smoke that may be related to cancer; correct?
A. From a medical point of view?
Q. Yes, sir.
A. The answer is "No."
Q. You have never done a summary of peer-

reviewed literature as Dr. Teague did in 1953 to determine what science knew about cancer and about compounds in smoke that may be related to cancer; have you, sir?
A. I've never done a detailed literature survey about -- about the formation of cancer or the causation of cancer.
Q. And that's what Dr. Teague did as far back as 1953, about a half century ago; is that not correct, sir?
A. Well, you are correct that Dr. Teague did a very detailed literature survey about what's known about cigarette smoking and the development of cancer.
Q. Sir, are you familiar with a 1930 study by Kennaway and Cook of the London School who have thoroughly established the fact that certain pure synthetic polynuclear aromatic compounds were true percentages?
A. I don't remember the article that you're referring to. I do know that the least of certain polycyclic aromatic hydrocarbons may be involved in the formation of cancer goes at least as early as that and, I think, really earlier.

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Q. And insofar as expertise in that area, you're also not an expert in that area; correct?
A. In what area specifically?
Q. In the area in which Drs. Kennaway and Cook of the London School wrote dealing with the pure synthetic polynuclear aromatic compounds being percentages.
A. I'm not an expert in the area of

carcinogenesis.
Q. You are also not a statistician; correct, sir?
A. That is correct.
Q. You're not an epidemiologist?
A. That is correct, also.
Q. You're also not a biologist?
A. That's correct.
Although a number of biologists and toxicologists work on my staff, and so I have some knowledge of many areas of biology and toxicology.
Q. You are not an expert in biology, bottom line?
A. I think I just answered that.
Q. You are not a market researcher?
A. That is correct.
Q. You are not an economist?
A. That's right.
Q. You have written no peer-reviewed articles that deal with the price elasticity and how it effects cigarettes and cigarette sales; correct?
A. That is correct.
Q. You are not a mortality expert?
A. That's correct.
Q. You are not a demographics expert?
A. Right.
Q. You are not an expert on tracking methodology?
A. Tracking?
Q. Yes.
A. Of?
Q. There are tracking studies that you will see

during the course of this case that you will be asked questions about. You've seen some of those studies; have you not?
A. You mean tracking of what specifically?
Q. Tracking of trends, tracking of teenage smoking, tracking of habits, tracking of certain groups of people and their smoking behavior.
A. I'm not an expert in tracking of consumer behavior.
Q. You are not a historian by training? In other words, you have no degree in history?
A. That's correct. My brother is, though.
Q. Is he going to testify here today?
A. (Witness shakes head negatively.)
Q. You are not a psychologist; are you, sir?
A. No.
Q. You're not a psychiatrist?

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A. That's correct.
Q. You have no degree in psychopharmacology?
A. That's right.
Q. And psychopharmacology deals with the understanding about physiology; does it not?
A. That's part of it, yes.
Q. And the other part is the central nervous system; is that not correct?
A. That's important.
THE COURT:
Mr. Bencomo, I think it's time for the recess.
MR. BENCOMO:
Yes, Your Honor. Perfect. It's 2:45.
THE COURT:

Fifteen-minute recess by the wall clock.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?
MR. BENCOMO:
No, Your Honor.
THE COURT:
Defense counsel?
MR. WITTMANN:
No, Your Honor.
THE COURT:
Special Master Gianna is reminding me that I should discuss the issue that counsel brought up with him before we started testimony today.
Mr. Richardson?
MR. RICHARDSON:
I'm right here, Judge.
THE COURT:
Oh, there you are.
THE SPECIAL MASTER:
I'll take care of it, Your Honor.
THE COURT:
All right. Mr. Gianna is going to take care of it.
Thank you. We'll recess for fifteen minutes.
(Whereupon a brief recess was taken at

this time from 2:45 o'clock p.m. to 3:01 o'clock p.m.)
THE MINUTE CLERK:
All rise for the jury.
(Whereupon the jury joins the proceedings at this time.)
THE MINUTE CLERK:
All rise, please. Recess is over. Court will come to order. Please be seated.
THE COURT:

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Mr. Bencomo.
MR. BENCOMO:
Thank you, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Dr. Townsend, just before the break, I asked you about psychopharmacology. And you responded that it deals with someone who knows about two things: Physiology and the central nervous system; is that not correct, sir?
A. We talked about both of those things, yes.
Q. Now, isn't there an individual at Reynolds by the name of J. H. Robinson today? Is he still there?
A. Yes, he is.
Q. Okay. And is he not much more eminently qualified than you to give opinions in the area of psychopharmacology?
A. He is an expert in that area.
Q. And you are not?
A. That's correct.
Q. And so to the extent that an opinion were to be requested in that area as it pertains to

cigarette design, we should either hear from Mr. Robinson or someone else who has his expertise or the jury should just use their common sense in determining what the response should be; is that not correct?
MR. BELASIC:
Objection. Argumentative.
THE COURT:
Overruled.
Answer the question, if you're able to.
A. Well, first of all, it's Dr. Robinson.
And if it's a question that you're asking about specific details of psychopharmacology, Dr. Robinson is the expert. I have some awareness of that subject but I'm not the expert as he is.
But your question referred to the design of cigarettes. And in the design of cigarettes, I am the expert.
EXAMINATION BY MR. BENCOMO:
Q. But in the area of psychopharmacology insofar as it is a component of the design of cigarettes, Dr. Robinson is the expert, not you; that's correct?
A. Dr. Robinson is the expert in psychopharmacology. I'm an expert in the design of cigarettes. So it depends exactly on which question you're asking as to, I think, what the answer is.
Q. You have done no research in the area of psychopharmacology; correct?
A. I've done no direct research myself, that's correct.
Q. You've written no peer-reviewed articles in the field of psychopharmacology?

A. That's right.
Q. And Dr. Robinson has expertise in the area of smoking behavior research; does he not?

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A. He has done quite a lot of research in the area of smoking behavior.
Q. Now, sir, you have never published any peer-reviewed document in the literature dealing with the issue of reducing tar and nicotine; is that not correct?
A. In the peer-reviewed literature, that is correct.
Q. You are also not a medical researcher; correct?
A. That is correct, yes.
Q. And you have previously testified that you don't understand most of the medical literature; is that not correct?
A. Oh, I think that's fair. I don't understand a lot of medical research literature. I do understand some, and I try real hard to understand the point of it and the meaningfulness of it.
Q. But you actually told people and you've testified under oath that you're not terribly interested in the medical literature because you need somebody to explain it to you; is that not correct?
A. I may have said that. I think that's not the full story, though. Because to the extent that medical literature can guide my cigarette design research, I am very interested in that.
The details of medical research, as I said, as you've said that I said, I agree with, I don't

understand a lot of the details. But if it can guide my cigarette design research, you bet I try to understand that.
Q. But the bottom line is that when it comes to medical literature, to the extent that you have to deal with it, you need somebody to explain it to you; is that not correct, sir?
A. In many cases, that is correct. And that's why we have experts in my department who can explain it to me.
Q. Thank you.
Now, in your resumé, you listed who you worked for over your career. And the bulk of your business career has been with RJR, as you just told us, for over 25 years; correct?
A. Yes.
Q. You also worked for Rohm & Haas before that; correct?
A. That's right.
Q. And, now, between your graduation from college, when you received your bachelor's degree and your going to work on your master's degree, I believe in Tallahassee, Florida, you worked for a company by the name of Liggett & Myers; is that not correct?
A. I spent one summer with Liggett & Myers as a summer student because I was -- I needed a job badly, so I went and knocked on their door and they gave me a summer job.
Q. You're not suggesting they felt sorry for you; are you?

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A. No, they didn't feel sorry for me.

Q. Tell the jury who Liggett & Myers is.
A. It's a tobacco company.
Q. Okay. Now, have you been made aware that Ms. Scott, one of the class representatives, was asked why she had not sued Liggett & Myers in connection with this case?
A. I'm not aware of that.
Q. Now, are you aware, sir, that Liggett & Myers was not, N-O-T, a signatory to The Frank Statement in 1954?
A. I don't remember.
Q. Well, I'll show you the report, sir, during your cross-examination.
Sir, assume for a moment that Liggett & Myers was not a signatory to the 1954 Frank Statement.
MR. BELASIC:
Objection, Your Honor. May we approach?
MR. BENCOMO:
I'll withdraw the question, Your Honor.
At this time, by the way.
EXAMINATION BY MR. BENCOMO:
Q. Sir, are you familiar with the Vice-President of Public Health Affairs at the Vector Corporation?
A. I can't recall his name.
Q. All right. Why don't you tell the jury first what the Vector Corporation is.
MR. LONG:
Objection, Your Honor. May we approach?
THE COURT:
Yes.
(Whereupon a bench conference is held at this time as follows:)

THE COURT:
Is your mike off?
MR. BENCOMO:
As far as I know.
THE COURT:
Okay. Just checking.
Mr. Long.
MR. LONG:
My objection is this is beyond qualifications. This may be entirely appropriate cross-examination on the merits as to Liggett and Vector, its successor corporation. But it's got nothing to do with this individual's qualifications.
MR. BENCOMO:
Well, Judge, let me say one thing.
THE COURT:
Well, I don't know the answer to the question, so I don't know -- What's he going to say?
MR. BENCOMO:
Well, first of all, the Vector Corporation is another tobacco company. They design cigarettes. And they have people on

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their team -- He talked about the fact that he's at the very top -- that he's at the very top of that organization.

And I think that I should be able to explore, as a designer, whether or not RJR has people like this particular individual who I'm about to ask him about. Because that's all part of the design function.

THE COURT:
Yes.
It's borderline but I think it's relevant, so the objection is overruled.
How are things in Kansas City?
MR. LONG:
We're okay.
MR. BENCOMO:
Thank you, Your Honor.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The objection is overruled.
Answer the question.
Do you remember the question or shall I read it back?
THE WITNESS:
Would you please, Your Honor?
THE COURT:
"All right. Why don't you tell the jury first what the Vector Corporation is."
THE WITNESS:
I'm not sure of the detailed business connection, but it is a company associated with Liggett & Myers.

EXAMINATION BY MR. BENCOMO:

Q. And you know that they are in the tobacco business; do you not?
A. Yes.
Q. As a matter of fact, they make a cigarette; do they not?
A. I think they make several, yes.

Q. And the Vice-President of Public Health Affairs for that company is an individual by the name of Tony Albino, Dr. Tony Albino. Do you know that name?
A. I've heard his name, yes. I don't know him.
Q. Now, sir, that company also designs cigarettes; does it not?
A. Yes.
Q. Now, Dr. Albino is an expert in the field of cancer biology with an international reputation. Do you have any designers or anyone within your umbrella who is an expert in cancer biology such as Dr. Albino is?
MR. BELASIC:
Objection, Your Honor. May we approach?
THE COURT:
Sustained.

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Don't answer the question. Next question, please.

EXAMINATION BY MR. BENCOMO:

Q. Sir, I'd like to turn for a moment to your budget. I'm assuming that your department has a budget; is that not correct?

A. Of course.

Q. Well, I didn't know.

MR. BELASIC:

Your Honor, may we approach?

THE COURT:

Yes.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

Mr. Belasic.

MR. BELASIC:

Your Honor, I'm going to object on the grounds that it's improper for the same reason that you've ruled many times before: That the comparisons of the R & D budget with the advertising budget isn't proper.

What I don't want is if you allow this testimony and for the plaintiffs to somehow claim that the door they opened, that somehow the door is now opened to the advertising budget, they're going to ask this, that they're going to open that door, they don't get the advertising budget in because it's clear that's what he's going to try to do.

MR. BENCOMO:

Judge, I'm not asking him -- And, you know, Mr. Belasic, you're too clairvoyant for me, so cut it out. I am not asking --

MR. BELASIC:

I'll say what I want.

THE COURT:

Just a moment. Don't address each other; address me.

MR. BENCOMO:

Yes.

I am not going to ask a single question about advertising budget. That's not where I'm going. I'm talking about design.

THE COURT:

No, the gravamen of his complaint is you may claim that this opens the door a little

bit. But, of course, you can't open the door for yourself.

MR. BENCOMO:

Well, of course.

THE COURT:

The objection is overruled.

MR. BENCOMO:

Thank you, Your Honor.

(Whereupon the bench conference is concluded at this time.)

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Support: http://www.industrydocuments.ucsf.edu/docs/sggl0001

THE COURT:
The question is overruled.
Answer the question. And the question was --
MR. BENCOMO:
I don't believe there's a question on the floor at this moment, Your Honor. But I'll be happy to ask a follow-up.
EXAMINATION BY MR. BENCOMO:
Q. What was your budget in the Research & Development Department last year for RJR?
A. That's proprietary information.
Q. So you're not willing to tell this jury, these ladies and gentlemen, how much money you spent last year in designing and developing cigarettes; is that not correct, sir?
MR. SHOLES:
Objection, Your Honor. May we approach?
MR. WILLIAMS:
May we approach?
THE COURT:
You may approach.

(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Who said, "May we approach?"
Mr. Sholes.
MR. SHOLES:
Judge, I'm willing to be extremely tolerant of everything Mr. Bencomo wants to do. But at this point, this is getting so egregious it's absurd.
At this point he has now said, after the witness has said that's proprietary information, he now wants to suggest to the jury that he does not want to tell the jury something.
The fact of the matter is, Judge, that we all know he can't release that kind of information to the other companies while they're present. It's wrong. It's inappropriate for Mr. Bencomo to suggest to the jury that the gentleman is trying to hide something from them.
Somebody's got to stop him, Judge.
MR. BENCOMO:
Judge, first of all -- May I respond? First of all, are you gentlemen finished with whatever comments you want to make?
Mr. Belasic?
MR. BELASIC:
Your Honor, it is incredibly proprietary. R. J. Reynolds is not going to tell Philip Morris what their R & D budget

is. I don't think it's relevant to his qualifications in any case.
THE COURT:
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He's a sophisticated witness. If that's the reason, "I don't want my competition to know," he can certainly say that.

MR. BELASIC:

He can.

But he shouldn't be compelled, at least in this trial, to divulge the R & D budget to the people here that work for Philip Morris and his competitors.

MR. BENCOMO:

Judge, may I respond to that?

MR. BELASIC:

Especially when it's not relevant to the qualifications.

MR. BENCOMO:

Judge, here's the problem.

Number one, he can't make the determination as to what is or is not proprietary, number one.

Number two, the problem is that he has 360, I believe he said, or 330 employees under his department now.

If a hotel -- If a hotel organization has 330 bellboys, they have a budget of maybe two million dollars. If a cigarette company has 330 people in management, 60 of whom are Ph.D.s, their budget could be 50 to a hundred million dollars. And I can link this up.

There's a reason why I think I should be

entitled to go down this road from a design point of view.

THE COURT:

Where do you go when he says "I can't answer that question because it's proprietary information," which he's already said?

MR. BENCOMO:

Well, you're the Judge. You can force him to do it.

THE COURT:

I'm not going to do that. I'm not going to do that.

MR. BENCOMO:

Well, can I ask if it's in excess of 50 million dollars?

THE COURT:

I'm going to overrule the objection and see what he says. He's not willing to tell the jury. I think he's --

MR. BENCOMO:

Well, let me ask you this so we don't have to keep coming back here. Can I just say is it more than 50 million dollars?

THE COURT:

No, I'm not going to let you do that because he's going to give the same answer.

If it's proprietary and it's a trade secret, I don't think it's appropriate to divulge it because of the presence of competitors --

MR. BENCOMO:

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I understand.

THE COURT:

-- and the public nature of the transcript in this case.

MR. BENCOMO:

I understand.

I respectfully disagree, but I certainly accept Your Honor's ruling on this issue.

THE COURT:

Okay.

(Whereupon the bench conference is concluded at this time.)

THE COURT:

The objection is overruled.

Answer the question, if you're able to.

MR. BELASIC:

Your Honor, may we approach?

THE COURT:

Yes.

(Whereupon a bench conference is held at this time as follows:)

MR. BELASIC:

He has already answered the question. He said it's proprietary. And I thought you sustained my objection.

THE COURT:

No, I said I would overrule the objection and see what he says.

The question is you're not willing to tell the jury how much they spend on R & D? That's the question to him.

MR. BENCOMO:

That's correct.

MR. BELASIC:

All right. If that's the question. All right. Then my objection is withdrawn.

MR. BENCOMO:

Mr. Herman --

THE COURT:

(Addressing Mr. Belasic.) I can let you look at it. I can back it up. Do you want to see it?

MR. BELASIC:

I trust you, Your Honor.

THE COURT:

Okay.

MR. BENCOMO:

Mr. Herman wants to add an observation on the whole issue that we discussed about the amount where we believe they opened the door.

MR. RUSS HERMAN:

Mr. Gay in direct examination -- in cross-examination introduced the whole subject of how much money was spent on research. And, as I recall, elicited from the witness one billion dollars.

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THE COURT:
What witness are you talking about and what day?
MR. RUSS HERMAN:
I believe it was Dr. Farone.
I briefed that issue in connection with how much compared -- research expenditures were compared with how much was spent on

advertising and specifically pointed out that testimony in briefing.
I can find it and I will bring it to you tomorrow. I don't want to hold this interrogation up.
THE COURT:
Okay. I'm interested in seeing it. I don't have a specific recollection, but I'll look at it.
The only ruling I've made so far is if this witness is saying our budget for R & D is proprietary and I will not disclose it, one, I'm not going to force him; and, two, he can ask a follow-up. And the follow-up is: So you're refusing to tell the jury?
That's where we are.
MR. RUSS HERMAN:
Thank you, Judge.
(Whereupon the bench conference is concluded at this time.)

EXAMINATION BY MR. BENCOMO:

Q. Dr. Townsend, are you refusing to tell this jury how much your budget is for research and development at Reynolds? "Yes" or "No"?

A. Yes, I consider that very sensitive information because this is such a competitive industry.
I can tell the jury that we spent all the money that we need to to develop new products. I have no --
MR. BENCOMO:
Your Honor, I hate to interrupt but I

move to strike. That was not my question.
THE COURT:
Overruled.
You may explain your answer but your explanation must be germane to the question. You're not allowed to make a speech on a subject that's not called for in answer to the question.
THE WITNESS:
Thank you, Your Honor.
THE COURT:
So finish your answer and abide by those instructions.
THE WITNESS:
Yes, Your Honor.
All I'm saying is we've had enough to do, the cigarette design research that you've

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been referring to.
EXAMINATION BY MR. BENCOMO:
Q. Well, sir, without going into the specifics of how much money you have spent or how much money you have budgeted for research and development, you told this jury that you have approximately 330 professionals, if you will, working in the Research & Development Department; is that correct?
A. In that neighborhood.
Q. And that 60 to 65 of those are Ph.D.s or doctors; is that not correct?
A. I think my estimate was around 60.
Q. Okay. So approximately one-fifth of the individuals who work in your department are not just college graduates but they have postgraduate degrees

like yourself; correct?
A. Well, if you're talking about all postgraduates, then it's more than that. But yes.
Q. Okay. Now, let's assume that you want to hire, for whatever reason, two more chemists for your department. Is that something that the company just says, "No, your budget is X and we won't let you do that"?
A. No, the company gives me a certain budget. And it's pretty much up to me to decide how to spend that budget. If I need two new chemists, I'll figure out a way to do it within the constraints of my budget.
Q. And, of course, that budget changes yearly, depending on what's going on and what you guys are working on; is that not correct?
A. Well, I think you're exactly right that it depends very greatly on what we're working on. It depends very much on the projects that we're doing and what the prospects for success are.
Q. And if you need to, for instance, add three biologists and two chemists, the same thing? I mean, you as the head man at Research & Development are not going to make a request just for the sake of making a request and augmenting your budget; correct?
A. Well, certainly. There's got to be a real reason to take on new expense.
Q. Okay. Doctor, do you remember when I asked you whether or not you were an epidemiologist?
A. I remember that, actually, yes.
Q. Yes.

And you told this jury that you were not an epidemiologist; correct?
A. That's right.
Q. Now, why don't you tell the jury how many epidemiologists work under you at Reynolds.
A. We have -- There are actually no epidemiologists on the staff at Reynolds. Our scientists do talk to epidemiologists from time to time.
Q. But the answer to my very specific question

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is that there are zero, out of the 60 to 65 Ph.D.s, epidemiologists working at Reynolds Tobacco; correct?
A. That was my answer.
Q. And what is an epidemiologist? Can you please share that with the jury?
A. Sure. Be glad to.
An epidemiologist is essentially a statistician. It's an area of statistics that looks at people who get certain diseases and tries to determine what types of exposures or what types of background they have that might lead scientists to do further experiments to define causation.
So, for example, epidemiology was, I think, very critical in identifying some common factors among people who have contracted very short-term diseases. It is now being applied to long-term chronic diseases as well.
Q. The short answer is that epidemiologists study the relationship, for instance, of certain components to cancer statistically?
A. They may --

Q. "Yes" or "No"?
A. In essence, yes.
They study many different factors, demographic factors, exposure factors, work factors, work-related factors; and try to determine if there's common threads, essentially, statistically among people who have certain diseases.
Q. Okay. And you have zero epidemiologists at Reynolds?
THE COURT:
Repetitive. Don't answer that question.
Next question, please.
EXAMINATION BY MR. BENCOMO:
Q. Sir, if you wanted to retain or hire or bring on an epidemiologist at Reynolds, that would be within your purview to do; is that not correct?
A. That would be my decision.
Q. Okay. And your decision as of this point, as we sit here today, is I don't have any epidemiologists?
A. That is my decision. We do talk to epidemiologists as we need to.
Q. Now, sir, as a matter of fact, in the whole history of Reynolds Tobacco, there's never been an epidemiologist on its staff; is that not correct?
A. That is correct.
Q. Okay. And the cigarette industry, Lorillard, Philip Morris, Brown & Williamson, they, too, have had no epidemiologists on their staff; is that not correct?
A. I really don't know about my competitors.
Q. You never talk to your competitors, sir?

A. That's not what I said. I talk to scientists within my competitor organizations quite frequently.
Q. Have you ever had any discussion at any time

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with the head of Research & Development for Philip Morris?
A. Not the current one.
Q. The previous one?
A. Kathy Ellis, I've had numerous discussions with her.
Q. What about the head of Research & Development for Lorillard?
A. Well, actually, they have a new one. I haven't met him yet.
Q. What about the previous one?
A. The previous one was actually a former R. J. Reynolds employee, so I know him very well.
Q. And what about Brown & Williamson?
A. I don't know that current head.
Q. Okay. Have you, in those that you knew, wherever they may be, Kathy Ellis, the one who worked for you, have you ever said, "By the way, are y'all hiring any epidemiologists in your R & D Department?"
A. No.
Q. Okay. So if a lawyer representing a class of smokers in a case such as this wanted to ask an in-house epidemiologist a question about their opinion about cigarette smoking and cancer, there would be no one, no one for that attorney representing that class of smokers to speak with; is that not correct?
MR. SHOLES:

Objection. Relevance.
MR. BELASIC:
Objection. Relevance.
THE COURT:
Overruled.
Answer the question, if you're able to.
A. We don't have an epidemiologist at R. J. Reynolds. So I guess the way you've constructed this sentence -- I mean, this question, if a lawyer came to Reynolds and asked to talk to an epidemiologist, there is no one for him to talk to.
EXAMINATION BY MR. BENCOMO:
Q. Have you ever heard the term "plausible deniability"?
A. I've heard the term. I'm not sure exactly what's meant by it, but -- I think it depends on the context.
Q. Well, what do you think the term "plausible deniability" means?
A. I don't know.
Q. Have you ever heard the term "Don't ask, don't tell"?
A. In what context?
Q. Have you ever heard the term in any context, "Don't ask, don't tell"?
A. Yes.
Q. Now, sir, I know that you told this jury that it was proprietary to disclose the amount of your budget. And I respect that.
Can you tell this jury how many cigarettes you shipped last year?

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A. Yes. Around 90 billion.

Q. Okay. Now, I want to make sure that I heard you correctly. You didn't say 90 million with an "m," you said 90 billion with a "b"; is that correct?
A. I said 90 billion.
Q. I asked you because I didn't hear you correctly.
So I'm correct, it's 90 billion with a "b"?
MR. BELASIC:
Objection. Repetitive.
MR. BENCOMO:
I didn't hear him, Judge.
THE COURT:
Would you spell out your answer, please, Doctor?
THE WITNESS:
I'd be happy to, Your Honor.
Billion, B-I-L-L-I-O-N.
EXAMINATION BY MR. BENCOMO:
Q. Thank you.
And what percentage market share does Reynolds have in the tobacco market today?
A. About 23 percent.
Q. Now, what percentage market share does Philip Morris have in the tobacco industry today?
MR. BELASIC:
Objection. Irrelevant.
THE COURT:
Overruled.
Answer the question, if you're able to.
A. It's in the neighborhood of 50 percent.
EXAMINATION BY MR. BENCOMO:

Q. So if you roughly double the 90 billion, Philip Morris would have shipped in excess of 180 billion cigarettes in 2002; correct?
A. I think it would be in that ballpark somewhere.
Q. Now, what percentage does Lorillard have in the market today?
MR. LONG:
Your Honor, objection. Beyond qualifications.
THE COURT:
Overruled. Answer the question.
A. I'd just have to guess. I think it's about eight or nine percent.
EXAMINATION BY MR. BENCOMO:
Q. So they would have shipped approximately seven and a half, eight billion cigarettes?
A. Well, I think we can do the math. That's probably close.
Q. Okay. And what about B & W?
A. Brown & Williamson is about 12, 13 percent of the market. And that's just a guess.
Q. So about ten and a half billion or so cigarettes shipped in 2002, also; correct?

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A. Ten and a half billion?
Q. Or thereabouts?
A. No.
Q. Well, you tell us. You can do the math better than I can.
A. It would be like 40 billion.
Q. Okay. I'm sorry. Well, that's even better.
Now, sir, insofar as that -- as far as my

addition, 180 plus the 90, we're up to 270 billion, plus the 40, 310 billion, plus the 7, 318 billion cigarettes a year. And of the 318 billion cigarettes that were shipped to consumers and smokers, there is not, to your knowledge, a single epidemiologist who can talk about the cause and the effect in any one of these companies; correct?

MR. LONG:
Objection.
THE COURT:
That's repetitive, Mr. Bencomo.
MR. BENCOMO:
I'll go on.
THE COURT:
Don't answer that question.
Next question, please.
MR. BENCOMO:
I'll go on.

EXAMINATION BY MR. BENCOMO:
Q. Sir, you, in your expert report, you talk about your four-step methodology in testing or before you actually market cigarettes; is that correct?
A. No, that's not exactly correct.
Q. Okay. Well, why don't you clarify it for me and for the jury, please.
A. I'd be happy to.
We have a major effort at Reynolds and have, for many years, to reduce the risks of smoking. We have developed a number of products that we think probably do reduce the risks.
The four-step method that you're talking

about is a very well-defined method to evaluate those reduced risk products, to try to develop scientific consensus on whether they are safer or reduced risk or not.
The four-step process is a thorough examination of the chemistry of the smoke and evaluation of the performance of that cigarette.
The second is understanding in vitro or essentially laboratory biology experiments to see if the smoke is different in the way it acts biologically.
The third step is in vivo -- I'm sorry. The second step also includes in vivo, sometimes animal studies, to see if the smoke is really different in the biology with live animals.
The third step is evaluation with humans.
And the fourth step is independent review

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among scientific experts outside of Reynolds.
Q. Now, how long has this methodology been in place?
A. We actually developed this methodology over many years. It was first applied to Eclipse cigarettes in 1999, but we had elements of it for many years before. In fact, I would say most of those elements were present well back into the late eighties.
Q. But the bottom line, Dr. Townsend, is that the four-step methodology was not actually applied to a cigarette designed by Reynolds until the Eclipse cigarette in 1999; correct?
A. That's not exactly correct.
The Eclipse cigarette in 1999, we used the

four-step methodology to demonstrate that that is a reduced risk cigarette, that it probably reduces risk.
Before that, the elements of the four-step method were in place and were used, in fact, on Premier much earlier in the late eighties. They've been used on other cigarettes for the stewardship effort. And the stewardship effort at Reynolds is to ensure that nothing we do increases the risk.
Q. All right. Just to make sure that we're on the same page, you said that the elements were in place for the Premier. That would have been sometime in the late eighties; correct?
A. That's right.
Q. Even though the elements were in place, was the four-step scientific methodology used at that time? "Yes" or "No"?
A. I'm sorry. Can you ask that again?
Q. Yes.
Was the four-step scientific methodology that you have just explained to the jury used with Premier? Not elements of it. Was it used? "Yes" or "No"?
A. No, not in exactly that same way.
Because the four-step method ultimately leads us to an understanding, a consensus, if you will, a weight of the evidence of whether these cigarettes really are reduced risk cigarette or safer or not that leads us to make a claim in the marketplace.
Q. Have you used the four-step scientific methodology with low-tar, low-nicotine cigarettes?
A. Many of the elements have been used.

But, again, we're not making a claim with it. And so going through the whole four-step methodology, the four-step process, wasn't required to get to any kind of claim since we weren't making a claim. But most of the elements to this four-step methodology have been used.
Q. But the bottom line is that insofar as low-tar cigarettes, the four-step scientific methodology has never been used?
A. No, that's terribly misleading. The elements

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that are in that --
Q. Well, I'm asking.
A. -- including chemistry, biology, both in vitro biology, or laboratory biology measurements, in vivo, the studies with animals, and even studies with humans have been evaluated extensively at Reynolds. The only -- The four-step methodology, you're using that in a misleading way because that is intended to --
Q. Sir, those are your words, not mine.
THE COURT:
Mr. Bencomo, don't interrupt the answer, please.
Finish your answer, Doctor.
THE WITNESS:
Thank you, Your Honor.
-- is intended to get us to an overall consensus of whether this is reduced risk so that we can make a claim in the market.
But the scientific elements of the four-step process have been used for low-tar cigarettes, among many others.

EXAMINATION BY MR. BENCOMO:
Q. Sir, does your expert report not mention the four-step scientific methodology?
A. It does.
Q. Those are your words; correct?
A. That's our company's words, yes.
Q. Okay.
A. We're very proud of the four-step process that we've developed.
Q. I just want to make sure that you understand that I didn't come up with those words; you did.
Sir, you're familiar with a Dr. Rodgman; are you not?
A. Yes, I am.
Q. He was an RJR employee; was he not?
A. He was.
Q. And he was actually asking for biological testing, which is one of the hallmarks, if you will, of the four-step scientific methodology, in the early sixties; was he not?
A. Do you have a document you're referring to? I'll be glad to look at it.
Q. Yes, I sure do.
Carl, would you please pull up Exhibit 5319?
MR. BELASIC:
May we approach, Your Honor?
THE COURT:
You may approach.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Belasic.

MR. BELASIC:
It's beyond the scope of Dr. Townsend's qualifications; and, second, there's been

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absolutely no disclosure of this document for use in cross-examination as required.

MS. DeSUE:

Mark, I gave that to you already. I gave you the list that was produced.

MR. BELASIC:

When?

MS. DeSUE:

That was produced today.

MR. BELASIC:

I'll take your word for it then.

But, Your Honor, this is way beyond qualifications. This is their merits cross-examination.

MR. BENCOMO:

No, he's a designer talking about the four-step methodology. And the bottom line is that if that's the case, if it was in use back in the eighties and all that, I mean, I think he can be tested on the methodology and the design, what he's looked at historically, how far back the stuff went.

THE COURT:

Yes.

Where is the document?

MR. BENCOMO:

It's coming up right now.

THE COURT:

I want to look at it.

MR. BENCOMO:

Yes.

THE COURT:

Not publish it. I want to look at it.

MR. BENCOMO:

Yes, of course.

THE COURT:

And your objection is to reference to the document?

MR. BELASIC:

I will take Christine's word for it that it was given to my associate.

But my objection is to beyond qualifications. This is a merits process.

THE COURT:

I'll look at it and I'll rule. I'll either sustain the objection or overrule it after I see what the document is.

MR. BENCOMO:

Thank you, Your Honor.

(Whereupon the bench conference is concluded at this time.)

MR. BENCOMO:

Carl, would you be kind enough to pull up 5319 and show it to the witness, to The Court and to opposing counsel, please?

THE COURT:

Where are the plaintiffs' cross documents for this witness?

THE SPECIAL MASTER:

They'll be in the back. Look in the

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THE COURT:
Is this document in evidence?
MS. DeSUE:
Yes, Your Honor.
MR. BENCOMO:
Yes, Your Honor.
MR. BELASIC:
Your Honor, a prior version under a different number, I believe, is in evidence, Exhibit 3106.
THE COURT:
The objection is overruled.
What is your request, Mr. Bencomo?
MR. BENCOMO:
Yes, Your Honor.

EXAMINATION BY MR. BENCOMO:

Q. And would you please share with the ladies and gentlemen of the jury who Dr. Rodgman was, sir?

A. Dr. Rodgman was one of the directors of research. He was a high level scientist in the Research & Development Department at Reynolds.

Q. You're familiar with the document you have in front of you; are you not?

A. I've seen this in the course of litigation, yes.

MR. BELASIC:
Your Honor, may the witness have a hard copy of the document?
THE COURT:
I have one that's highlighted. I don't know where it came from.
MR. LEGER:

That's our copy.
THE COURT:
That's the only one I have.
MR. BENCOMO:
Your Honor, he can have the highlighted copy. That's fine.
THE COURT:
He has it.

EXAMINATION BY MR. BENCOMO:

Q. Sir, you now have a hard copy in front of you?

A. Yes, I do.

Q. And why don't you look through it?

I'm just going to ask you some very brief questions and see if you'd just let the jury and The Court know whether or not that's a document that you've seen before in litigation?

A. (Witness reviews document.) Yeah, this appears to be one that I've seen before. I think this is a draft. There are several different versions of this that I've seen. This is one of them.

MR. BENCOMO:
Your Honor, may we publish?

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THE COURT:
You may publish it.
MR. BENCOMO:
Carl, would you please pull up the first page? Thank you.
And would you kindly highlight the top left-hand corner where they have the author, the division, and the date, please. And then

blow that up.
Thank you.
EXAMINATION BY MR. BENCOMO:
Q. And the author on that document is Alan Rodgman, the division is Chemical Research and it has a date of 1962; is that not correct, Dr. Townsend?
A. That's what it says.
MR. BENCOMO:
And, Carl, would you please highlight and blow up the title of the article itself?
EXAMINATION BY MR. BENCOMO:
Q. And the title of the article is "THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE APPRAISAL."
Did I read that correctly, Dr. Townsend?
A. Yes, you did.
Q. Okay. And what does -- How do you understand the term "objective" versus "subjective"? What is meant by "objective"?
A. Well, to me, as a scientist, objective is unbiased, an unbiased look at something.
MR. BENCOMO:
Carl, would you be kind enough to highlight the first sentence which is comprised of the first two lines and blow that up, please?
EXAMINATION BY MR. BENCOMO:
Q. And I quote from that sentence, Dr. Townsend, "The cigarette smoke-health problem is discussed, and it is related to the potential involvement of the members of the Company's Research Department."

You are the head of the Research Department; correct?
A. I am now.
Q. Well, I realize you were not back in '62. But you are now; correct?
A. That's what I said.
Q. Okay. Thank you.
And, sir, before I ask you another question, you mentioned a moment ago that you saw this document in connection with litigation; is that not correct?
A. Yes.
Q. Okay. And Mr. Belasic asked you a number of questions about the fact that you had this research library that you could go and access any documents; is that not correct?
A. That is correct.

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Q. And I know from earlier testimony you've given in other cases there's thousands of documents, is that not correct, in that library?
A. There are thousands.
Q. But you never saw this document when you were looking for whatever documents you might have been looking for in connection with any aspect of the Research Department; is that not correct?
A. I never saw this document except in litigation. This document appears to be a draft of a report.
Q. And how many pages are there of this report, Dr. Townsend? If you would just kind of count them and let the jury know.
A. There's six pages.

Q. Why don't you go to the very last page.
MR. BENCOMO:
And, Carl, if you would be kind enough to highlight the Subsection B. where it reads "RECOMMENDATIONS."
May we publish, Your Honor?
THE COURT:
You may publish.
MR. BENCOMO:
Thank you.
And if you will highlight the sentence right underneath that and the first two lines of Section 1, please. And blow those up.

EXAMINATION BY MR. BENCOMO:
Q. And, by the way, before I read that to the jury and to you, Dr. Townsend, is that the last page of this report?
A. It appears to be. I'm not sure.
Q. Now, it reads "RECOMMENDATIONS."
And I quote, "After consideration of the evidence available on the cigarette smoke-health problem and the Company's obligation to its customers...."
Did I read that correctly?
A. So far.
Q. Dr. Rodgman put the customers first; did he not?
A. Yes.
Q. Okay. And he didn't say anything, he didn't label it anything other than an obligation; did he not?
A. That's right.

And that's consistent with our longstanding stewardship program, no question.
Q. Then he goes on, and I quote, "...stockholders, and employees, it is recommended that: Number 1. Facilities, animals, and personnel (where necessary) be acquired as soon as possible...."
Now, do you understand the words "as soon as possible" to mean 1962, not late eighties, sir?
A. Well, I think it means what it says.

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Q. "Yes" or "No"?
A. It says as soon as possible.
Q. "...to study biologically cigarette smoke, tobacco, and tobacco additives."
Did I read that correctly?
A. Yes, you did.
Q. Now, when he mentions "biologically," is that not part of your four-step scientific methodology that you just told the jury about? "Yes" or "No"?
A. Yes, some of it is; some of it isn't.
At this point in time in 1962, people were developing biological methods for evaluating smoke. And I think Dr. Rodgman was arguing we should have had that capability in-house. And, ultimately, we did.
Q. Now, sir, I'd like to turn your attention to a project within Reynolds that was called the Black Hole Project.
Are you familiar with that project?
A. Yes, I am.
Q. And that name, Black Hole Project, was a name that was given not by a lawyer but was given by the

in-house Research Department at Reynolds; is that not correct?
A. No, I think that's fair, yes.
Q. That project involved the Premier cigarette; correct?
A. That's correct.
Q. And it was a very secret project; was it not?
A. It was a very secret project, yes.
Q. Now, how many people knew about this project; can you tell this jury?
A. I don't know exactly the answer to that question. A lot of people at Reynolds knew about it. Executive levels all the way down to many, many scientists in R & D that were working on it to people in our operations or manufacturing group who was trying to figure out how to make Premier. Quite a few people in R. J. Reynolds.
Q. Do you know how many?
A. I said I don't know exactly the answer to your question.
Q. Okay. Now, the fact that someone may have known or heard the term Black Hole Project and that individual was working on one aspect of it does not mean that he knew all of the aspects of the project; is that not correct?
A. I think in many cases that is correct.
Q. And the bottom line is that Reynolds was very concerned that others would find out about it, so you kept the lid on it, meaning on the project; is that not correct?
A. That is correct.
We were very concerned about secrecy around

the Premier project because we did not want our competitors to find out we were doing it --
Q. And I --

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A. -- to find out the direction of that project.
Q. I'm sorry. Okay.
And, sir, so there are times, there are times when, for competitive reasons, it's good for individuals to enter into an agreement; is it not?
In other words, don't -- let's not tell our competition what we're doing because we want to be the first with this project, let's say; correct?
Am I correct in that?
A. Well, it was quite a long question. But let me see if I can help.
Q. Well, I'll be happy to rephrase it.
A. I think essentially, essentially if I understood your question, you're basically right.
This is such a competitive business that there are projects where we do not want our competitors, Philip Morris, Brown & Williamson, Lorillard, to know what we're doing because we intend to beat them in the marketplace with, for example, Premier and Eclipse. And so we will keep a very tight control over information on those projects.
Q. And the reason, I believe, that you have described in the past why it was named the Black Hole is because everything went in, yet nothing came out; is that not correct?
A. That is correct. It's from astronomy or from -- yeah, astronomy, actually.
Q. Stephen Hawking?

A. There are black holes in the universe where the density of matter in those black holes is so great that it sucks everything in, nothing can get out, not even a light.
Q. Hence, the term?
A. Yes.
Q. Now, I'd like to turn your attention to another black hole. And that would be "the gentlemen's agreement."
Have you ever heard about that?
MR. BELASIC:
Objection, Your Honor.
THE COURT:
Sustained.
MR. BENCOMO:
Let me -- I'll rephrase, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Sir, have you heard of "the gentlemen's agreement"?
A. In the course of litigation, yes.
Q. And is it not a fact, sir, that your understanding of that term is that there was an agreement among these defendants, Philip Morris, Lorillard, Brown & Williamson and your employer, R. J. Reynolds, not to do biological testing in the United States? "Yes" or "No"?
MR. LONG:
Objection, Your Honor. Way beyond qualifications.
THE COURT:
Approach the bench.

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(Whereupon a bench conference is held at this time as follows:)

THE COURT:

It's far afield from qualifications, Mr. Bencomo. It's certainly good cross on the merits.

MR. BENCOMO:

Okay.

THE COURT:

But I don't think that it has to do with whether or not this man is qualified as an expert as tendered by Mr. Belasic.

MR. BENCOMO:

Okay.

THE COURT:

Please go on to something that has to do with his qualifications.

MR. BENCOMO:

Okay.

THE COURT:

And save that kind of stuff for cross.

MR. BENCOMO:

Thank you.

Your Honor, I will withdraw the question.

THE COURT:

Okay.

(Whereupon the bench conference is concluded at this time.)

MR. BENCOMO:

Excuse me, Your Honor. Would you give me a minute?

THE COURT:

Mr. Bencomo, Mr. Belasic, approach, please.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

I just noticed it's very close to 4:00 o'clock. Can you tell me what the duration of your cross will be at this point?

MR. BENCOMO:

Judge, I can't because I may very well, when I go back, make the decision that I won't have any other questions when I come here tomorrow morning on the qualifications. But I don't want to tell The Court "No" and then have to --

THE COURT:

No, I'm asking you is it feasible to go past 4:00 --

MR. BENCOMO:

No.

THE COURT:

-- with the hope that you'll finish your cross on qualifications --

MR. BENCOMO:

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No.
THE COURT:
-- by ten after or so?
MR. BENCOMO:
No, that's what I'm saying.
I mean, I think it's just better if you just say, "We're going to finish for the day." And then tomorrow morning, I'm going

to try to just like possibly streamline this and say, "I have no more questions." That's why I think it would be better if we shut it down right now.
Now, let me just add something else before I forget, I don't want to forget this. I want to reserve the right, of course, to go into the gentlemen's agreement in the case-in-chief.
THE COURT:
I haven't put any restrictions on your cross-examination on the merits.
MR. BENCOMO:
Sure. I know that.
THE COURT:
But you're getting far afield on his qualifications. I've given you a great deal of latitude.
MR. BENCOMO:
And I appreciate that.
THE COURT:
I'm drawing the line at this point.
MR. BENCOMO:
Yes.
THE COURT:
Okay.
MR. BENCOMO:
And that's why I'm saying I think it would be appropriate right now --
THE COURT:
Okay. We're going to recess for today at this point.

MR. BENCOMO:
Thank you.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
We're going to recess at this time for today until 9:30 tomorrow morning. See you then.
Thank you.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?
MR. BENCOMO:

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No, Your Honor.
MR. RUSS HERMAN:
No, Your Honor.
THE COURT:
Defense counsel, anything for the record?
MR. WITTMANN:
No, Your Honor.
MR. SCHNEIDER:
Yes, Your Honor, if I may.
THE COURT:
Mr. Schneider.
MR. SCHNEIDER:
Briefly, two items.
First, prior to the jury coming in, I

was asked to make sure that counsel for plaintiffs had a copy of Dr. Louria's testimony in the trial in West Virginia. I gave them a copy of that. They also said they didn't have a copy of his deposition in that case. I'm getting that over here.
With respect to Dr. Boyse, they wanted transcripts. I gave them a copy of the letter that I sent over on Thursday. So that's taken care of.
The other thing Your Honor wanted us to do was to confer with Mr. Bruno about the exhibits used with Dr. Rowell. Some of them I objected to in their entirety because they weren't shown, they weren't referenced, they were hearsay. There was a set of them where we said that a portion that could be introduced.
And what Mr. Bruno and I agreed is that I would go back, make the copies of the documents with just the portions that we thought could be introduced, show them to Mr. Bruno, and he agreed we'd give them to Your Honor in that state. And I'll do that tomorrow morning.
THE COURT:
All right. Fine.
Anything else?
We'll recess until 9:30 tomorrow morning.
(Whereupon the proceedings were adjourned at 4:00 o'clock p.m.)

REPORTER'S CERTIFICATE

I, CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared

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and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

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